

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WAUSAU BUSINESS INSURANCE COMPANY,
AND EMPLOYERS INSURANCE COMPANY
OF WAUSAU

PLAINTIFF,

CIVIL ACTION NO.
11 CIV 2482
(J. BRICCETTI)

-AGAINST-

**ANSWER TO
DEFENDANT AGIN'S
FIRST AMENDED
THIRD-PARTY
COMPLAINT**

ALPINE CONSULTING CO. OF NEW YORK, INC,
ASSOCIATED GERIATRICS INFORMATION
NETWORK, INC., CREST HALL CORP., CROWN
NURSING HOME ASSOCIATES, INC., OAK HOLLOW
NC CORP., CENTRAL HEALTHCARE SERVICES,
INC., BLOSSOM HEALTH CARE CENTER, INC.,
BLOSSOM NORTH, LLC, BLOSSOM SOUTH, LLC,
CAMPBELL HALL HEALTH CARE CENTER, INC.,
VICTORY LAKE OPERATIONS, LLC, AND CAMPBELL
HALL REHABILITATION CENTER, INC.,

DEFENDANTS.

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ASSOCIATED GERIATRIC INFORMATION
NETWORK, INC.,

THIRD PARTY PLAINTIFF

-against-

OXFORD COVERAGE, INC., ABC CORPS. 1-5,
XYZ LLC'S 1-5 and JOHN and JANE DOES
1-5,

THIRD PARTY DEFENDANTS.

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Third Party Defendant OXFORD COVERAGE, INC. by its attorneys, DRABKIN &

MARGULIES, sets forth the following as and for its **Answer to Third Party Plaintiff's Associated Geriatric Information Network, Inc. 's ("AGIN") First Amended Third Party Complaint**, with Affirmative Defenses:

ANSWERING PRELIMINARY ALLEGATIONS

1. Defendant admits the allegations in Paragraph 2, 4, 5 and 8.
2. Denies generally, upon information and belief, without complete knowledge sufficient to form a belief as to the truth of all averments, all the allegations alleged in paragraphs , 1, 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 26, 17, 18, 19, 20 and 21, and refer all conclusions of fact and law to this Court.
3. Denies each and every allegation in paragraphs 22 and 23.

ANSWERING FIRST CAUSE OF ACTION

4. Defendant repeats and re-alleges all the answers noted above as to the allegations contained in paragraphs 1 through 23 as if fully set forth herein.
5. Denies each and every allegation in paragraphs 25 and 26..

ANSWERING SECOND CAUSE OF ACTION

6. Defendant repeats and re-alleges all the answers noted above as to the allegations contained in paragraphs 1 through 26 as if fully set forth herein.
7. Denies each and every allegation in paragraphs 28 and 29.

ANSWERING THIRD CAUSE OF ACTION

8. Defendant repeats and re-alleges all the answers noted above as to the allegations contained in paragraphs 1 through 29 as if fully set forth herein.
9. Denies each and every allegation in paragraph 31 and 32.

AS AND FOR ITS FIRST AFFIRMATIVE DEFENSE

10. The Third Party Complaint fails to state a cause of action upon which relief can be granted.

AS AND FOR ITS SECOND AFFIRMATIVE DEFENSE

11. The Third Party Claims are barred by reason of the doctrine of waiver.

AS AND FOR ITS THIRD AFFIRMATIVE DEFENSE

12. The Third Party Claims are barred by reason of defendant's laches.

AS AND FOR ITS FOURTH AFFIRMATIVE DEFENSE

13. The Third Party Claims are barred by reason of the causes of action being moot, since all allegations against AGIN by plaintiff have been released and discontinued without AGIN having to pay any amounts to plaintiff.

AS AND FOR ITS FIFTH AFFIRMATIVE DEFENSE

14. Third Party Defendant has a defense based upon payment, that is that all allegations against AGIN by plaintiff have been released and discontinued without AGIN having to pay any amounts to plaintiff.

AS AND FOR ITS SIXTH AFFIRMATIVE DEFENSE

15. All or part of third party plaintiff's claim is barred by the doctrine of accord and satisfaction, as all allegations against AGIN by plaintiff have been released and discontinued without AGIN having to pay any amounts to plaintiff.

AS AND FOR ITS SEVENTH AFFIRMATIVE DEFENSE

16. The Third Party Claims are moot since AGIN has not been, and will not be determined to bear any liability to one or both of the Plaintiffs (or any co-defendant) for any claim asserted in the Amended Complaint or any other pleadings, including but not limited to any

retrospectively calculated or adjusted premium amounts.

AS AND FOR ITS EIGHTH AFFIRMATIVE DEFENSE

17. The Third Party Claims are barred by the lack of privity between Third Party Plaintiff and Third Party Defendant.

AS AND FOR ITS NINTH AFFIRMATIVE DEFENSE

18. The Third Party Claims are barred by lack of consideration.

AS AND FOR ITS TENTH AFFIRMATIVE DEFENSE

19. Third Party Defendant has a defense based upon mitigation of damages and/or Third Party Plaintiff's failure to do so.

AS AND FOR ITS ELEVENTH AFFIRMATIVE DEFENSE

20. The Court lacks subject matter jurisdiction over the third party claims on the ground that there is no diversity of citizenship, and the amount in controversy does not exceed \$75,000.

WHEREFORE, Defendant **OXFORD COVERAGE INC** demands judgment dismissing the Third Party Complaint, together with all other relief as may be just and proper under the circumstances to be determined by this Court, together with costs, interest and expenses.

DATED: NEW YORK, NEW YORK
March 20, 2012

Yours, etc.

A handwritten signature in black ink, appearing to read 'Robert Margulies', is written over a horizontal line.

Robert Margulies (RWNY3335)

DRABKIN & MARGULIES

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